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BY ECF

Honorable James C. Francis IV
United States Magistrate Judge
500 Pearl Street
New York, NY 10007

Re: *Adrienne Garbini, et al. v. City of New York, et al.*, 05 Civ. 1565 (RJS) (JCF)

Your Honor:

Plaintiff Joshua Russell writes to request respectfully that the Court issue an Order, pursuant to Local Civil Rule 54.1(c)(3), permitting plaintiff to be eligible to receive, as a taxable cost, those fees he expends in retaining and utilizing an expert witness in pursuit of his claim for damages.

Local Civil Rule 54.1(c)(3) provides, in pertinent part, as follows: “Fees for expert witnesses are taxable only to the extent of fees for ordinary witnesses unless prior court approval was obtained.” In assessing whether to permit a plaintiff to recover expert-related expenses as part of his/her taxable costs, courts focus on whether the expenditure is reasonable. *See, e.g., Green v. Torres*, No. 98 Civ. 8700, 2002 U.S. Dist. LEXIS 8096, at *6 (S.D.N.Y. May 7, 2002), *vacated and remanded on other grounds*, 59 Fed. Appx. 400, 2003 U.S. App. LEXIS 4071 (2d Cir. 2003); *Reynolds v. Goord*, No. 98 Civ. 6722, 2001 U.S. Dist. LEXIS 1203, at *11-12 (S.D.N.Y. Feb. 13, 2001).

In the instant matter, plaintiff alleges that his pre-existing eczema condition was greatly exacerbated by his confinement in the toxic conditions at Pier 57. As defendants have made clear, both causation and the extent of plaintiff’s injuries will be hotly disputed issues during motion practice and at trial. These are not issues in which an expert witness might merely be helpful to a jury’s understanding -- this is a case where an expert witness (likely a dermatologist with an expertise in chemical exposure) is absolutely essential to plaintiff proving up both causation and threshold injuries. As such, the expenditure for an expert witness is not

only “reasonable,” but an absolute requirement for making out plaintiff’s case. Accordingly, plaintiff respectfully requests that the Court grant prior approval for his use of an expert witness.

Thank you for your consideration of this request.

Respectfully,

/s

Rose M. Weber (RW 0515)

cc: Cheryl Shammass, Esq. (by ECF)